IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2424 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

HAJRATSHAH A DIVAN - Respondent(s)

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Appearance :

MRS FALGUNI D PATEL for Petitioner(s) : 1,
MR JS BRAHMBHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/08/2005

ORAL JUDGMENT

1. In this petition, the petitioner-Gujarat State Road Transport Corporation has challenged the legality of the award dated 4/9/2004 passed by Industrial Tribunal, Vadodara. The respondent-workman was at the relevant

time working as a driver. The bus in question did not have a conductor and the task of giving tickets to the passengers was, therefore, being done by the respondent-workman. Upon a surprise check by the officers of the petitioner, it was found that the respondent-workman had carried nine passengers in the bus from whom though fare was collected but tickets were not issued. The defence of the respondent-workman was that these passengers had boarded the bus not from the stand but from the road since one of them was seriously ill. His case was that he always meant to deposit the fare collected with the Corporation. The disciplinary authority, however, did not accept the version of the respondent. Finding him guilty of the charges, which besides the allegations of admitted mis-appropriation also included one of mis-behaving with the inspection party, imposed a punishment of withholding of six increments permanently. The respondent challenged the punishment awarded before the Industrial Tribunal.

2. The Industrial Tribunal though found that the workman was guilty of misconduct in as much as he had not made a note in the log sheet about the recovery of the fare from the passengers was of the opinion that the

charge proved against the respondent was not serious. The Industrial Tribunal found that though it is proved against the respondent that he carried additional passengers, concluded that there is no element of mis-appropriation of money. In the result the Industrial Tribunal set aside the penalty imposed by the employer and substituted the same by ordering withholding of two increments with future effect.

3. The petitioner, through a departmental inquiry conducted against the respondent proved that the respondent was carrying nine passengers from whom though fare was collected, tickets were not issued. To this factual aspect of the matter, there is hardly any dispute raised by the respondent also. His only case was that he had the intention to deposit the amount with the Corporation and, therefore, made no entries in the log sheet. Such a defence could not have been accepted by the Industrial Tribunal. When the bus was intercepted, the respondent was carrying passengers without issuance of tickets though fare was collected. Such a serious charge could not have been ignored without valid defence on the part of the respondent. The Industrial Tribunal erred in concluding that there is no element of mis-

appropriation of fund. When the respondent collected the fare but did not make any entries in this regard there was obvious attempt of mis-appropriation of the fare so collected. I am unable to countenance the observations of the Industrial Tribunal that there is no element of mis-appropriation. The Industrial Tribunal, therefore, erred in reducing the penalty. For serious charges, the employer had chosen to impose the penalty of withholding of six increments with future effect. There was no justification or occasion to substitute such a penalty. The award of the Industrial Tribunal is, therefore, liable to be and is hereby set aside. Rule is made absolute accordingly. No order as to costs.

(Akil Kureshi, J.)

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